

EXHIBIT 174

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

- - -

4 IN RE: NATIONAL : HON. DAN A.
5 PRESCRIPTION OPIATE : POLSTER
6 LITIGATION : :
7 : :
8 APPLIES TO ALL CASES : NO.
9 : 1:17-MD-2804
10 : :
11 : :

12 - HIGHLY CONFIDENTIAL -

13 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

14 VOLUME I

15 - - -
16 January 22, 2019
17 - - -

18 Videotaped deposition of
19 MICHELE R. DEMPSEY, taken pursuant to
20 notice, was held at the law offices of
21 Drinker Biddle & Reath, 105 College Road
22 East, Princeton, New Jersey, beginning at
23 9:12 a.m., on the above date, before
24 Michelle L. Gray, a Registered
25 Professional Reporter, Certified
26 Shorthand Reporter, Certified Realtime
27 Reporter, and Notary Public.

- - -

28 GOLKOW LITIGATION SERVICES
29 877.370.3377 ph | 917.591.5672 fax
30 deps@golkow.com

1 Q. Okay. And following that,
2 did you meet again?

3 A. Yesterday.

4 Q. Yesterday. Okay. Aside
5 from meeting with counsel, did you meet
6 with anyone else to prepare for this
7 deposition?

8 A. No.

9 Q. Did you review any of the
10 transcripts in this litigation in
11 preparation -- preparation for your
12 deposition?

13 A. No.

14 Q. Did you speak with anybody
15 who has been deposed that is a current or
16 former employee of Janssen or Johnson &
17 Johnson or JOM in preparation for this
18 deposition?

19 A. No.

20 Q. Did you speak with any
21 employee who has been deposed in this
22 litigation at all concerning their
23 depositions?

24 A. No.

1 A. I no longer had oversight of
2 DEA compliance and security with the
3 divestiture of Noramco in 2016.

4 Q. Okay. So did there come a
5 time between 2007, when you oversaw
6 Noramco's supply chain, and 2016, when
7 Noramco was divested, that you
8 simultaneously had another role within
9 Johnson & Johnson?

10 A. Yes.

11 Q. And can you describe that?

12 A. In 2011, I was asked to lead
13 a project to introduce quota
14 understanding with -- outside of Noramco
15 into Janssen Supply Chain for -- so I was
16 involved in this project where I updated
17 existing SOPs outside of Noramco. I
18 became aware and visited the other
19 locations that did the manufacturing of
20 the Janssen products.

21 And over -- from 2011 until
22 2012, 2012 March was when I was formally
23 given direct -- I had people at the sites
24 reporting into me. So I had the

1 Janssen.

2 Q. Okay. Before we move on
3 from employment history, I just want to
4 make sure that I have this -- this down.

5 You addressed that in March
6 of 2012, you took on the additional role
7 of being director of controlled
8 substances compliance -- substance
9 compliance; is that right?

10 A. Yes.

11 Q. And that was for Johnson &
12 Johnson?

13 A. That was for the Janssen
14 Supply Chain.

15 Q. Okay. And when we speak
16 about the Janssen Supply Chain, I know of
17 another company called JOM. Do you know
18 who JOM is?

19 A. Janssen Ortho-McNeil is the
20 legal entity name of the distribution
21 centers in which -- under J&J.

22 Q. Okay. So when I see or when
23 we see JOM as an emblem or insignia on
24 letterhead, that's referring to Janssen

1 Ortho-McNeil; is that right?

2 A. Yes.

3 Q. Okay. And Janssen

4 Ortho-McNeil, or JOM, oversaw supply

5 chain distribution for Janssen's

6 pharmaceutical products; is that right?

7 MR. BARKER: Objection.

8 THE WITNESS: Yes.

9 BY MR. JANUSH:

10 Q. JOM, for short, oversaw the

11 shipments of products from Janssen to

12 wholesaler customers, as an example; is

13 that correct?

14 A. JOM received orders for

15 wholesalers and shipped orders that were

16 approved to the wholesalers that went

17 through.

18 Q. Okay. And your function as

19 director of controlled substance

20 compliance operated out of JOM or out of

21 Janssen or Johnson & Johnson? Which is

22 it?

23 A. My role was in Janssen

24 Supply Chain, which I was located in

1 Wilmington, Delaware under Noramco.

2 Q. So you were simultaneously
3 working for Noramco addressing DEA
4 compliance issues, quota issues, security
5 issues for Noramco, right?

6 A. Yes.

7 Q. And at the same time you
8 were based out of Noramco's site in
9 Wilmington, Delaware. And you were
10 overseeing Janssen's compliance with
11 controlled substances; is that right?

12 A. Noramco was part of Janssen
13 Supply Chain. They were the active
14 pharmaceutical ingredient supplier. So I
15 expanded my support from just the active
16 pharmaceutical ingredient manufacture
17 through formulation to distribution.

18 Q. But to be clear, Noramco was
19 a wholly separate company than Janssen,
20 right?

21 A. It was a wholly owned
22 subsidiary of Johnson & Johnson.

23 Q. Right. And Noramco made the
24 raw ingredient that went into Janssen's

1 overseeing suspicious order monitoring
2 for Janssen or Johnson & Johnson?

3 A. It went back to Noramco.
4 Because Noramco was obligated to have a
5 suspicious order monitoring program. And
6 then when, in 2012 I had the two
7 distribution centers reporting into me.
8 I had input on their order monitoring
9 system as well.

10 Q. I'm separating out Noramco
11 in -- well, and Janssen. Okay.

12 So let's start with Noramco.
13 Your -- your role in overseeing
14 suspicious order monitoring for Noramco
15 was what?

16 MR. BARKER: Object to form.
17 BY MR. JANUSH:

18 Q. Can you describe your role
19 overseeing suspicious order monitoring
20 for Noramco?

21 A. As I mentioned before, my
22 role as the director of DEA compliance
23 and security is I ensured that the
24 manager and the specialist, that we had

1 if you're a seller like Mallinckrodt, and
2 you are selling to a wholesaler, and that
3 wholesaler is selling to a drug store,
4 for example a CVS or a Walgreens, that's
5 an example, and if Mallinckrodt had data
6 as to where customers' customer was
7 stocking its product, it should have
8 known that. Do you understand? We're on
9 the same page on that, aren't we?

10 MR. BARKER: Object to form.

11 THE WITNESS: I believe the
12 way DEA commented is you know the
13 customer and the downstream data,
14 where it goes. I don't believe
15 they say know your customers'
16 customer. But that was the intent
17 that, if you had this data
18 downstream that indicated where
19 your products go, you should have
20 been looking at it.

21 BY MR. JANUSH:

22 Q. And 2017 wasn't the first
23 time that you had been introduced to the
24 concept of knowing who your customers'

1 THE WITNESS: I -- I do
2 understand now 867. We -- there
3 are people in the planning and
4 trade that does provide this data
5 to us occasionally. So yes, I am
6 aware of 867.

7 BY MR. JANUSH:

8 Q. And what is -- why is 867
9 data provided from trade to compliance
10 occasionally?

11 A. For order monitoring. If we
12 have an order that is questionable, we --
13 our process involves planning, trade and
14 customer service reaching out to the
15 customer, obtaining information to
16 justify the questionable order demand
17 change. And so 867 data can be provided
18 to -- as part of the investigation.

19 Q. And the last bullet is
20 addressing 844 and 849. "Chargeback data
21 which identifies how much a vendor
22 qualifies for rebates."

23 Do you see that?

24 A. Yeah.

1 Q. And do you have an
2 understanding of what chargeback data or
3 844, 849 data is?

4 A. I never heard of the word
5 844, 849. But in -- after the
6 Mallinckrodt incident, I did learn about
7 chargeback data.

8 Q. And did you only learn about
9 chargeback data after the Mallinckrodt
10 incident?

11 Are you referring to the
12 2017 DEA citation with Mallinckrodt?

13 A. Yes.

14 Q. Okay. And so after some
15 point in time in 2017 when the DEA
16 cracked down on Mallinckrodt for not
17 using its chargeback data to figure out
18 how much drugs their end purchasers
19 were -- were obtaining, that's the first
20 time you learned about chargeback data?

21 A. That's the first time I
22 asked if we had the chargeback data, and
23 then I received the data. And we tried
24 to analyze it. But it was missing, it

1 A. Yes.

2 Q. Okay. Earlier we talked
3 about IntegriChain third-party data. Do
4 you remember that?

5 A. Yes.

6 Q. Okay. Would your answers be
7 the same, that you didn't know about a
8 company -- a third-party company called
9 ValueCentric 852 data or 867 data before
10 2017?

11 MR. BARKER: Object to form.

12 THE WITNESS: I did learn
13 about ValueTrak, ValueCentric
14 data. That they were the ones
15 supplying the blinded 852, 867
16 data.

17 BY MR. JANUSH:

18 Q. Okay. And is that the sole
19 capacity -- how did you learn about
20 ValueTrak or ValueCentric data?

21 A. I believe -- I don't recall
22 the exact date, but during our monthly
23 compliance reviews, it was presented as a
24 data source that could be used,

1 potentially, to help investigate
2 questionable orders.

3 Q. Okay. It was not a data
4 source that was built into your
5 suspicious order monitoring protocols to
6 stop a suspicious order in realtime,
7 right?

8 A. We have another order
9 monitoring program that reviews the
10 orders. Value -- it's a separate --
11 ValueTrak is a separate IT.

12 Q. So the answer to my question
13 is yes, right?

14 MR. BARKER: Object to form.

15 BY MR. JANUSH:

16 Q. My question was --

17 A. ValueTrak --

18 Q. It was not --

19 A. Sorry.

20 Q. My question was it was not a
21 data source that was built into your
22 suspicious order monitoring protocols to
23 stop an order in realtime, right?

24 MR. BARKER: Object to form.

1 THE WITNESS: Yes, it was
2 not our order monitoring program.

3 BY MR. JANUSH:

4 Q. Okay. And it wasn't a
5 component of your order monitoring
6 program, correct?

7 MR. BARKER: Object to form.

8 THE WITNESS: It was part of
9 our investigation process, that
10 our -- during the investigation,
11 did use that data.

12 BY MR. JANUSH:

13 Q. Okay.

14 (Document marked for
15 identification as Exhibit
16 Dempsey-4.)

17 BY MR. JANUSH:

18 Q. Let me show you what's been
19 marked as Exhibit 4. And this is a
20 parent cover e-mail, JAN-MS-00454956 with
21 an attachment. This runs sequentially
22 through 957 and 958. The attachment is
23 the third page, "High level overview of
24 JOM suspicious or excessive order

1 monitoring SOM."

2 Do you see that, third page?

3 A. I'm -- I'm reading that now.

4 Q. So I'm going to -- I'm
5 actually going to first turn your
6 attention -- I just wanted to run through
7 the header that you saw that the third
8 page existed so I gave you a complete
9 document.

10 Do you see that?

11 A. Yes.

12 Q. Okay. Turning to the first
13 page. This is from Luis Valcárcel to Ron
14 Kuntz and Paul Lowman.

15 Who is Luis or Luis
16 Valcárcel in the organization of
17 Ortho-McNeil?

18 MR. BARKER: Object to form.

19 THE WITNESS: Luis was in
20 trade.

21 BY MR. JANUSH:

22 Q. And do you remember what his
23 title was?

24 A. No, I'm sorry.

1 Q. And Ron Kuntz, who was he?

2 A. He was in marketing for
3 Nucynta.

4 Q. He was the director of the
5 pain franchise, right?

6 MR. BARKER: Object to form.

7 THE WITNESS: I don't recall
8 his actual title.

9 BY MR. JANUSH:

10 Q. And how about Paul Lowman?

11 A. I never -- I do not know who
12 he is.

13 Q. Okay. And this is
14 addressing the -- in -- underneath Luis's
15 e-mail, in the second paragraph,
16 "ValueTrak EDI 852 data has McKesson and
17 Cardinal constantly (sic) over 99 percent
18 in stock levels at a macro level. There
19 are some deviations from the 99 plus
20 stocking levels at a few selected
21 distribution centers."

22 Do you see that?

23 MR. BARKER: Object to form.

24 The witness had asked you before

1 A. Yes.

2 Q. So at the last paragraph of
3 this second page ending in Bates number
4 957, the definition of suspicious and
5 excessive order is provided, is it not?

6 MR. BARKER: Object to form.

7 THE WITNESS: That is a
8 definition that the writer of the
9 e-mail had provided, is their
10 interpretation of what a
11 suspicious and excessive order is.

12 BY MR. JANUSH:

13 Q. Why don't you read that into
14 the record.

15 A. It states, "A potentially
16 suspicious or excessive controlled
17 substance order can be defined as an
18 order that exceeds the minimum order
19 quantity requirements and is above three
20 times (300 percent) the calculated
21 12-month per weekly order average. This
22 definition also applies to products that
23 are scheduled in one or more states but
24 not by DEA."

1 Q. Do you disagree that in June
2 of 2012 this was your company's
3 definition of a suspicious -- potentially
4 suspicious order?

5 A. That is the order monitoring
6 program's parameters that it was looking
7 for, so yes that was.

8 Q. So you don't disagree with
9 this statement, correct?

10 A. I do not disagree with the
11 statement that that is what the order
12 monitoring program was looking for.

13 Q. Okay. And by that we're
14 talking about three times or 300 percent
15 of the calculated 12-month per weekly
16 order average, right?

17 A. Yes.

18 Q. Now, turning to the last
19 page. That same definition carries over
20 onto the high level overview of JOM
21 suspicious or excessive order monitoring;
22 is that right?

23 MR. BARKER: Object to form.

24 BY MR. JANUSH:

1 Q. I'm highlighting it on the
2 screen for you --

3 A. Right. That is what our
4 order monitoring report or program does.

5 Q. Okay. Now moving to the JOM
6 suspicious order report. The first
7 bullet says, "BW report is generally
8 completed by 4:00 p.m."

9 What is the acronym BW stand
10 for?

11 A. So it's an SAP terminology,
12 which is an IT system called Business
13 Warehouse. We developed a report that
14 takes the last 12-month weekly order
15 average and factors in the three times
16 percent. So when you're -- when you
17 review the definition above, that's
18 exactly what this BW report does, is all
19 the orders go through it, and history is
20 compared and is -- that one single order
21 is compared to this threshold.

22 Q. When that one single order
23 is compared to threshold, how is that
24 order compared -- how is it broken down

1 in terms of at a SKU or SKU level of a
2 product?

3 A. It is per customer, per DEA
4 license SKU.

5 Q. So just so we're on the same
6 page, and I'm going to break that down
7 into layman's terms, or try to since I'm
8 not in your business, when that BW report
9 is run or generally completed at
10 4:00 p.m., and it's comparing a
11 particular customer's order against their
12 rolling 12-month per weekly order
13 average, it's comparing for particular
14 SKUs for particular drug types and drug
15 strengths against the same drug type and
16 drug strength in the new order; is that
17 right?

18 A. Yeah, it takes the SKU,
19 which is that dosage formulation, and it
20 compares to the past 12-month rolling
21 average.

22 Q. Okay. So we are on the same
23 page then. What it doesn't do,
24 therefore, and correct me if I'm wrong,

1 is address if hypothetically a wholesaler
2 like a Cardinal, AmerisourceBergen, or
3 McKesson, had previously purchased
4 Duragesic at 50-milligram strength, but
5 in an ensuing order, present day, so to
6 speak, purchased at a 75-milligram
7 strength, your system wouldn't compare
8 the 75-milligram order being made in the
9 present tense to the 50-milligram orders
10 that had previously been made because
11 they are different SKUs or S-K-U-s; is
12 that right.

13 MS. BOODY: Object to form.

14 THE WITNESS: Yes.

15 BY MR. JANUSH:

16 Q. I didn't hear you. I'm
17 sorry. Is that right?

18 A. Yes.

19 Q. And moving beyond a
20 different SKU issue, for example, a
21 strength issue with Duragesic, that might
22 be produced in multiple different
23 strengths, your order monitoring system
24 or suspicious order monitoring system

1 also wouldn't have captured the aggregate
2 of opioid products sold to a wholesaler
3 customer and compared the aggregate order
4 history against the present day order;
5 isn't that also true?

6 MR. BARKER: Object to form.

7 BY MR. JANUSH:

8 Q. For example, to make this
9 more clear, we'll just speak in terms of
10 Nucynta and Duragesic. Okay?

11 A. Okay.

12 Q. So if hypothetically
13 Cardinal purchased Duragesic
14 50-milligram, 2 cases of 24 patches last
15 month with one case of Nucynta ER -- and
16 this is obviously a hypothetical, because
17 Nucynta, I appreciate, was sold in 2016
18 or thereabouts. Your system in a
19 hypothetical universe of 2012 wouldn't
20 have compared a new order by Cardinal,
21 where Duragesic was being purchased at
22 75 milligrams and Nucynta IR was being
23 purchased instead of Nucynta ER.
24 Those -- the past order and the current

1 order, having completely different SKUs,
2 would not have been compared against each
3 other under your suspicious order
4 monitoring system; isn't that right?

5 MR. BARKER: Object to form.

6 MS. BOODY: Object to form.

7 THE WITNESS: Every order
8 that we received with a customer
9 based on the SKU is reviewed for
10 historical ordering of that SKU.
11 We do also take in context total
12 products that are shipped to
13 Cardinal and McKesson, and we
14 compare total products to
15 controlled substances. We're
16 monitoring how much of controlled
17 substances they're ordering
18 compared to other of our J&J
19 products.

20 So quarterly basis we're
21 reviewing that information. So --
22 so we have more visibility to what
23 volume of controlled substances
24 are they ordering compared to

1 shipments, JOM is not Noramco, correct?

2 A. Yes. They are not Noramco.

3 Q. JOM is Johnson Ortho-McNeil,
4 correct?

5 A. Yes.

6 Q. And JOM, the bullet above
7 it, is the Pharma customer service and
8 distribution center for North America
9 with around 14 billion worth of sales
10 shipped every year.

11 This is referring to Johnson
12 & Johnson's pharmaceutical sales that are
13 shipped through JOM; is that right?

14 MR. BARKER: Object to form.

15 THE WITNESS: I don't know
16 if that was the intent of that
17 bullet or where this data came
18 from. But it speaks to, I do know
19 that our two distribution centers
20 under JOM do handle the
21 pharmaceutical products of
22 Janssen.

23 BY MR. JANUSH:

24 Q. Okay. I'm just trying to

1 delineate very clearly between when we're
2 speaking about JOM and when we're
3 speaking about Noramco. Do you
4 understand that goal?

5 A. Yes.

6 Q. Okay. And in this document,
7 you are -- not you, JOM is addressing
8 what JOM business is, right?

9 A. Yes. And as I mentioned
10 before, they lumped in Schedule II, the
11 psychotropic ADHD meds as well, instead
12 of just narcotics.

13 Q. Okay.

14 (Document marked for
15 identification as Exhibit
16 Dempsey-6.)

17 BY MR. JANUSH:

18 Q. I'm going to move to what
19 I've marked as Dempsey Exhibit 6. This
20 is an e-mail string with an attachment.
21 This concerns communications between you
22 and Ron Kuntz that was then forwarded on
23 by Ron to Patricia Yap. And I'm going to
24 read -- start by reading -- having you

1 read your e-mail in the middle of the
2 first page where you wrote to Ron, "I
3 just called my friend."

4 Why don't you start there?

5 A. "I just called my friend
6 that retired in December from Purdue,
7 ex-DEA, that managed the relationship
8 with DEA during the OxyContin years, and
9 setup their suspicious order monitoring
10 program. He was the one who went to
11 visit pharmacies with wholesalers. I
12 attached benchmarking notes taken when
13 JOM chatted with the Purdue on the
14 suspicious order monitoring program last
15 year."

16 Q. Now, let's just stop and
17 pause right there.

18 "I attached benchmarking
19 notes taken when JOM chatted with Purdue
20 on the SOM program last year."

21 Do you see that?

22 A. Yes.

23 Q. And that's not saying, "I
24 attached benchmarking notes when Noramco

1 chatted with Purdue on the SOM program
2 last year"; is that right?

3 A. Right. It was JOM.

4 Q. Okay. And again, as you
5 just testified moments ago, JOM is
6 different from Noramco, right?

7 A. Yes.

8 Q. Okay. And reading below his
9 business card that's embedded in your
10 e-mail -- why don't you read below?

11 A. "He met with sales force
12 with Purdue. He also was the one that
13 called DEA when sales force found
14 suspicious doctors. Law department gave
15 suspicious order monitoring training to
16 sales."

17 Continue?

18 "I am not sure of the
19 project scope. Didn't give him any
20 details but said you may call him.
21 Please do. You will enjoy it. He was
22 widely respected in the New Jersey pharma
23 industry group."

24 Q. Now, before I go any

1 page, he's addressing some background
2 information that, "Purdue enhanced its
3 order monitoring program beginning in
4 early 2008."

5 Do you see that?

6 A. Yes, I do.

7 Q. And then he addressed formal
8 monitoring meetings that were held with
9 various wholesalers; is that right?

10 A. The authorized distributors,
11 yes.

12 Q. Okay. And we'll skip
13 forward to the attachment, which is
14 Bates-stamped JAN-MS-03115790.

15 These are the nine pages of
16 notes that you addressed with Michael
17 Levitt that you attached to the e-mail,
18 aren't they?

19 MR. BARKER: Object to form.
20 You've got a gap in your Bates
21 numbers in this document.

22 MR. JANUSH: Yes, I do.
23 It's due to the whole production
24 fight that we fought over. You

1 may recall how these were
2 produced -- originally withheld as
3 nonresponsive, and then produced.
4 There was a reason for pushing
5 back this deposition.

6 So unfortunately --

7 MR. BARKER: This is one of
8 them?

9 MR. JANUSH: This is one of
10 those documents that Seth Baglin
11 said could not reproduce it in the
12 correct Bates range. I would have
13 liked it to have been done right
14 as well.

15 BY MR. JANUSH:

16 Q. Going back to my question.
17 These are your nine pages of notes from
18 my --

19 A. This looks like my
20 handwriting and my notes, yes.

21 Q. Okay. And from a -- from a
22 3/20/12 pre-meeting, at the top. Those
23 are your notes from the pre-meeting; is
24 that right? Right?

1 And then moving to the
2 bottom, 3/21/12, that's the more complete
3 in-person meeting; is that right?

4 A. Yes.

5 Q. And this concerns what is
6 stated in the earlier e-mail when you
7 wrote to Ron Kuntz about your notes from
8 when JOM benchmarked with Purdue, right?

9 A. These are the notes that I
10 took when we benchmarked with Purdue on
11 their suspicious order monitoring
12 program, and it was attached to the
13 e-mail that I sent to Ron Kuntz.

14 MR. JANUSH: Not answering
15 my question specifically. So I'm
16 going to move to strike as
17 nonresponsive. I'm focusing on
18 JOM.

19 BY MR. JANUSH:

20 Q. My question was, this
21 concerns what is stated in the earlier
22 e-mail when you wrote to Ron Kuntz that
23 you were attaching notes from when JOM
24 benchmarked with Purdue, right? Just

1 asking for a yes or no here.

2 A. Yes, these are the notes in
3 reference, yes.

4 Q. Not from when Noramco
5 benchmarked with Purdue. From when JOM
6 benchmarked with Purdue, right?

7 A. Yes, JOM.

8 Q. Okay. We're going to go
9 through some of these notes. All right?

10 A. Mm-hmm.

11 Q. And really, what my goal
12 here is to just figure out what -- what
13 information was conveyed by Mr. Crowley
14 and Purdue and perhaps other attendees to
15 JOM and you and your colleagues during
16 this meeting.

17 So first, in the pre-meeting
18 on March 20th, 2012, Mr. Crowley or
19 someone, appears to have stated, "Purdue
20 has a contract with wholesalers to buy
21 sales data."

22 Do you see that?

23 A. Yes, I do.

24 Q. Did you inquire as to what

1 that actually means in practice, who the
2 contract is with with wholesalers to buy
3 sales data?

4 A. No.

5 Q. Do you know if Purdue had a
6 contract with Cardinal,
7 AmerisourceBergen, and McKesson to buy
8 sales data?

9 A. No.

10 Q. Never inquired?

11 A. No.

12 Q. And next statement is,
13 "Design a system so that they get
14 realtime information about wholesaler
15 sales."

16 Do you see that?

17 A. Yes.

18 Q. Did you -- was this just
19 informational as setup for the next day,
20 or did you get into a discussion
21 regarding how Purdue designed a system so
22 that they could get realtime information
23 about wholesaler sales?

24 A. This was just a high level

1 discussion point of elements that we were
2 going to discuss at the benchmark
3 meeting.

4 Q. Got it. So let's just then
5 move forward to the benchmark meeting if
6 these elements are covered therein.

7 We'll go to the bottom of
8 the page, 3/21/2012. Stephen Seid
9 executive director, national accounts,
10 Purdue, was present; is that right?

11 A. Yes.

12 Q. Jack Crowley, Controlled
13 Substances Act compliance, Purdue. And
14 Rebecca Lyons listed as a VP of JOM.
15 What was Rebecca Lyons' role?

16 A. She had accountability for
17 the two distribution centers. I forget
18 exactly what her title was. But the
19 operations reported in to her.

20 Q. Okay. Mike Levitt, he is
21 who we discussed earlier that was a DEA
22 compliance manager?

23 A. Yes.

24 Q. How about Bruce Keale?

1 A. Finance on the leadership
2 team at JOM.

3 Q. Why would finance have been
4 involved in this benchmarking meeting?

5 A. I wanted all the leaders to
6 understand the requirements of suspicious
7 order monitoring.

8 Q. Okay. How about Greg
9 Wolski?

10 A. He was at the time, 2012,
11 customer service.

12 Q. All right. And so, would it
13 have been -- let's move to the next page
14 ending in Bates number 03115791. And it
15 says, "Purdue enhanced in 2008, designed
16 program to characterize data exposure to
17 retail data, 'know your customers'
18 customer."

19 Do you see that?

20 A. Yes, I do.

21 Q. So here you were in 2012, in
22 March, specifically March 21, 2012,
23 benchmarking with Purdue, right?

24 A. Yes.

1 Q. And you were learning that
2 Purdue, in 2008, designed their
3 suspicious order monitoring program to
4 characterize data exposure to retail data
5 to know your customers' customer. Is
6 that also right?

7 MR. BARKER: Object to form.

8 THE WITNESS: That is --
9 that is what Purdue relayed to us.

10 BY MR. JANUSH:

11 Q. Janssen didn't follow
12 Purdue's benchmark, did they?

13 MR. BARKER: Object to form.

14 BY MR. JANUSH:

15 Q. You can answer.

16 A. We -- we -- our system
17 provided the data that DEA had requested
18 from us. And we had no -- with our
19 multiple engagements with DEA in -- in
20 2013, we talked about this, you know, and
21 we were not -- the DEA did not expect
22 that information from us at that time,
23 for our Duragesic and Nucynta.

24 Q. That was a great answer to a

1 question I never asked so I'm going to
2 move to strike as nonresponsive.

3 Do you remember my actual
4 question?

5 MR. BARKER: Object to form.

6 THE WITNESS: Yes. You
7 asked if JOM implemented a know
8 your customers' customer --

9 BY MR. JANUSH:

10 Q. No, that's not what I asked.
11 I said Janssen didn't follow Purdue's
12 benchmark, did they?

13 MR. BARKER: Object to form.

14 THE WITNESS: We --
15 actually, this entire benchmark we
16 did incorporate some of the
17 recommendations --

18 BY MR. JANUSH:

19 Q. We'll get there.

20 A. -- but the specific know
21 your customers' customer, we did not
22 include it as an enhancement to our
23 system at that time.

24 Q. Okay. Did you include know

1 Q. Isn't it also a hot spot
2 area an area that got a high prescribing
3 rate of opioids?

4 A. I don't know. At this time
5 it was those areas where there were
6 abuse, hot spots.

7 Q. And --

8 A. That was my -- my
9 interpretation from 2012.

10 Q. And -- and isn't hot spot
11 areas where there is a high amount of
12 abuse and diversion correlated to hot
13 spot areas where there's a high amount of
14 prescribing?

15 A. I don't know that data to --
16 to make an answer on that.

17 Q. And it says, "Look at all
18 products."

19 Do you see that?

20 A. Yes.

21 Q. "Have an agenda." Do you
22 see that?

23 A. Yes.

24 Q. At this time in March of

1 2012, you were being guided that Purdue
2 looks at all products when -- when it
3 revises its suspicious order monitoring
4 standard operating procedures, right?

5 MR. BARKER: Object to form.

6 THE WITNESS: That is what
7 they reviewed to us.

8 BY MR. JANUSH:

9 Q. And earlier you and I were
10 discussing the concept of Janssen or JOM
11 only looking and running its suspicious
12 order monitoring calculation against the
13 same SKU so that an order would come up
14 as suspicious when the same SKU was
15 compared against a prior order involving
16 that specific product and strength, i.e.,
17 SKU. Remember that discussion?

18 A. I do remember that
19 discussion.

20 Q. Okay. Purdue was doing it
21 differently, weren't they?

22 MR. BARKER: Object to form.

23 THE WITNESS: I don't recall
24 if what he was talking about was

1 all of Purdue's products, meaning
2 controlled and noncontrolled, or
3 if they meant at the drug class.

4 It was a high level
5 discussion. We didn't get into
6 the detail of what they actually
7 looked at in regards to all the
8 products.

9 BY MR. JANUSH:

10 Q. Okay. And it says, "Between
11 meetings meet with wholesalers, orders
12 looked at daily basis"; is that right?

13 A. That's what it says.

14 Q. "Channel strategy, 866 data,
15 orders monitored reach out. Order arrow,
16 use day-to-day ValueCentric data to send
17 message when doesn't meet guidelines."

18 What does that mean, "to use
19 day-to-day ValueCentric data to send
20 message when it doesn't meet guidelines"?

21 A. What that means is because
22 we had visibility to what the
23 wholesalers' inventory at their DC is
24 with this ValueCentric data, if a

1 questionable order comes in that doesn't
2 meet the typical ordering pattern or
3 volumes, we use this data to -- before we
4 reach out to the customer because their
5 order does not meet what they currently
6 have in inventory that -- that they --
7 the questionable order amount doesn't
8 appear to be needed. That's what that
9 means. And --

10 Q. It says, "Use day-to-day
11 ValueCentric data to send message when
12 doesn't meet guidelines."

13 Was -- was there a way to
14 send message within ValueCentric?

15 A. No. This was -- customer
16 service.

17 Q. He just meant to send -- he
18 just meant to send the message that
19 something is amiss?

20 A. Yes.

21 Q. What does it mean when you
22 wrote, "Different" -- when you took the
23 notes, "Different algorithm for SC-867
24 data"?

1 A. I don't recall.

2 Q. What is SC?

3 A. I don't remember.

4 Q. "Trend prescriber data."

5 You know what this means, don't you?

6 A. Yes, I do.

7 Q. What does it mean?

8 A. I am -- what he was saying
9 at a high level, that Purdue does use
10 prescriber data and analyze where it's
11 coming from.

12 Q. In other words, they were
13 looking at prescriber data as a potential
14 red flag, right?

15 MR. BARKER: Object to form.

16 THE WITNESS: It appears
17 that they were for their products.

18 BY MR. JANUSH:

19 Q. And Janssen and JOM were not
20 doing that, correct?

21 MR. BARKER: Object to form.

22 THE WITNESS: No, for our
23 Duragesic and Nucynta and other
24 scheduled products, we did not do

1 trend analysis on the prescriber
2 data as I previously said. We
3 stopped at the wholesaler.

4 BY MR. JANUSH:

5 Q. Did you know that your sales
6 group was doing trend analysis on its
7 higher prescribers of Nucynta and
8 Duragesic?

9 A. I did not know.

10 Q. Did you know that Janssen
11 was ranking its high Duragesic
12 prescribers and calling them Duragesic
13 loyalists in spreadsheets that were
14 shared with the sales force?

15 A. No, I did not know that.

16 Q. Did you know that Janssen,
17 while you were head of controlled -- you
18 still are, but while you were director of
19 controlled substance compliance, was in
20 2013 and perhaps earlier ranking doctors
21 based on whether they were platinum,
22 gold, silver, or bronze, based on how
23 many long-acting and short-acting Janssen
24 opioid products they were writing?

1 MR. BARKER: Object to form.

2 THE WITNESS: No.

3 BY MR. JANUSH:

4 Q. Is that information that you
5 would have wanted to know after meeting
6 with Jack Crowley and given -- been given
7 benchmarking guidance about looking at
8 prescriber data trends?

9 A. No. I was responsible for
10 ensuring our order monitoring process was
11 giving what DEA requested. And through
12 numerous engagements, every two to
13 three years we reviewed our program with
14 DEA. And they expected the wholesalers
15 to get that information. You know, we
16 asked for recommendations, and they never
17 told us that they needed that information
18 from us.

19 Q. Is it at all possible, have
20 you contemplated the fact that the DEA
21 might not have known what Janssen's
22 internal capabilities were in 2012 and
23 after?

24 MR. BARKER: Object to form.

1 was done and how doctors were being
2 tracked for high prescribing status, were
3 you?

4 MR. BARKER: Object to form.

5 THE WITNESS: I am a
6 controlled substance compliance
7 leader.

8 BY MR. JANUSH:

9 Q. Right.

10 A. And I am -- I only get -- I
11 only see the processes that are required
12 from DEA.

13 Q. Let's go back to the first
14 page of the e-mail. This e-mail
15 concerning your notes about benchmarking
16 with Purdue and Jack Crowley, ex-DEA, and
17 addressing Purdue's SOM system that was
18 revised in '08 made it to Ron Kuntz,
19 product director of the pain franchise,
20 right?

21 A. I did forward it to him.

22 Q. And Ron forwarded notes with
23 an FYI to Patricia Yap or Trish Yap,
24 right?

1 MR. BARKER: Object to form.

2 THE WITNESS: Well, I am not
3 on this e-mail --

4 BY MR. JANUSH:

5 Q. But you see --

6 A. -- so I never received --

7 Q. You can see that now, right?

8 A. I can see that it was
9 forwarded.

10 Q. Sorry.

11 MR. BARKER: You need to let
12 her answer too.

13 MR. JANUSH: My apologies.

14 BY MR. JANUSH:

15 Q. And you know who Patricia
16 Yap is, right?

17 A. No, I do not.

18 Q. Did you know that Patricia
19 Yap was one of the most senior executives
20 in sales and marketing in the pain
21 franchise?

22 MR. BARKER: Object to form.

23 THE WITNESS: I just said I
24 didn't know who she was.

1 BY MR. JANUSH:

2 Q. We'll go to the bottom of
3 this page ending in 793 addressing zip
4 codes, "Prescribers of concern. Do
5 targeting zip code pharmacies. If had
6 CVS and Walgreens, would be benefit."

7 That's referring to if we
8 had CVS and Walgreens' data unblinded,
9 that would be a benefit; is that right?

10 A. At the time, the word
11 "unblinding" wasn't --

12 Q. No, I know, but I'm saying
13 the intent of what this is capturing.

14 A. The intent, yes.

15 Q. Right? I have this correct.

16 So it is, though,
17 addressing, "Zip codes, prescribers of
18 concerns. Do targeting zip code
19 pharmacies."

20 Do you see that?

21 A. Yep.

22 Q. And so Purdue was reviewing
23 prescribers of concern and targeting zip
24 code pharmacies, right?

1 A. That is what it says.

2 Q. Janssen and JOM were not,
3 correct?

4 A. Our program --

5 Q. You can give me the
6 monologue. But I'm asking if they were
7 not, yes or no.

8 A. We were not.

9 Q. Okay. Flipping to the next
10 page. "852 data, ordering pattern,
11 deviants in order data SKU. 867 data
12 suspicious, occasion limit wholesalers."

13 Did I read this correctly
14 what I'm boxing in?

15 A. Yes.

16 Q. So at this time in 2012,
17 Purdue is addressing that when they
18 redesigned their 2008 SOM system, this is
19 information that was included in the
20 standard operating procedures; is that
21 right?

22 A. I don't know if it was
23 included in their SOPs, but they said
24 this is what they consider in their

1 process.

2 Q. Got it.

3 A. I didn't review SOPs.

4 Q. Understood. Then below
5 there's a note, "Sensitive to
6 wholesalers' relationship. Purdue rarely
7 called and said concerned about account,
8 seen it before, will cut orders to
9 wholesalers."

10 Can you elaborate on that
11 part of the discussion?

12 A. Looking at it all these
13 years, I don't recall what the discussion
14 was about.

15 Q. Okay. Was Janssen and JOM
16 concerned about their wholesalers'
17 relationships as well --

18 MR. BARKER: Object to form.

19 BY MR. JANUSH:

20 Q. -- when it came to notifying
21 wholesalers about suspicious orders?

22 MR. BARKER: Object to form.

23 THE WITNESS: Our process,
24 we already engaged the wholesalers

1 whenever a questionable order was
2 discovered. So we had no concern.
3 We reached out, and if necessary
4 engaged trade to reach up to the
5 wholesaler leaders to make sure
6 that we had the justification and
7 documentation, or if there's -- if
8 an order was deemed suspicious.

9 BY MR. JANUSH:

10 Q. Moving to the next page
11 ending in 795. It states, "Uses SAP
12 algorithm whiz, tweaks algorithm
13 instantly." This refers to the fact that
14 the Purdue system, the computer algorithm
15 that runs the suspicious order monitoring
16 math could be tweaked instantly; is that
17 right?

18 MR. BARKER: Object to form.

19 THE WITNESS: We didn't get
20 into the details of their actual
21 algorithm. So I don't -- I wrote
22 what they said, that -- apparently
23 they said tweaks instantly.

24 BY MR. JANUSH:

1 Q. Okay. And you did get into
2 the system enough to see it, looking at
3 it on their screen, right? That's what
4 follows next; is that right?

5 A. No. I just took notes.
6 They said looking on the screen. They
7 didn't show us the screen.

8 Q. Got it.

9 A. So he said, "Looking at the
10 screen, you'd see" -- I apologize. I
11 didn't give that detail there.

12 Q. Okay. Go ahead.

13 A. They did not show -- it was
14 a phone call. There was nothing -- by
15 then there was no WebEx or sharing.

16 Q. Understood. So why don't
17 you read what he stated looking at their
18 screen, what they could see?

19 A. "Can see largest purchaser,
20 total sales." I don't know what W stands
21 for. Apologies. I don't remember. "How
22 many orders per day and strength info."

23 Q. Keep going.

24 A. "Compare three months, six,

1 nine, 12. Room for committee to make
2 comment categories, pending, complete,
3 refer with wholesaler to DEA."

4 Q. And now I'm just going to
5 skip forward to the page ending in 796.
6 And going to address, at the bottom, it
7 looks like information that was being
8 conveyed about what to look for.

9 But why don't you describe
10 what this is referring to. It says,
11 "Number of prescriptions per month,
12 number for your product in month for
13 certain strength, number paid by cash.
14 DEA can figure out by NDC and number who
15 made it. If 95 percent in cash is an
16 indicator."

17 What's that referring to?

18 A. I don't recall. I mean,
19 just looking at this, it looks like one
20 of the red flags about the cash.

21 Q. Okay. And then -- and then,
22 "Rebate reports, systems. See what's
23 distributed, paid by cash." How were
24 rebates reports and systems being used by

1 substances.

2 MS. BOODY: Could I just see
3 a copy of Exhibits 12 and 13? I
4 don't think you have the Bates
5 number on the record.

6 Thank you.

7 MR. JANUSH: For the record,
8 the Bates number of Exhibit 13 is
9 JAN-MS-02964406.

10 And Exhibit 12 is
11 JAN-MS-02963380.

12 (Document marked for
13 identification as Exhibit
14 Dempsey-14.)

15 BY MR. JANUSH:

16 Q. I'm going to hand you what's
17 been marked as Dempsey Exhibit 14.

18 And earlier I -- I addressed
19 how you drafted your questionnaire. And
20 this just confirms for the record that
21 you wrote to Brian Strehlke, Michael
22 Levitt, Guy Bacco and Art Dysart, "I took
23 the Buzzee questionnaire and blended our
24 questions. Could you all review and let

1 me know your thoughts by this Wednesday?
2 I have a meeting with trade to review.
3 Would like to get this to ABC, Cardinal
4 and McKesson before our May visits.
5 Thanks."

6 Did I read that accurately?

7 A. Yes, you did.

8 Q. Okay. Why was it important
9 to you to get this to ABC,
10 AmerisourceBergen, Cardinal, and McKesson
11 before your May visits?

12 A. We had intended to have --
13 to set up meetings. I was going to work
14 with trade in order to meet with the
15 wholesalers to review our new
16 questionnaire.

17 Q. Did that meeting happen?

18 A. The meeting with trade did
19 happen.

20 Q. Did the meeting with
21 McKesson happen?

22 A. No.

23 Q. Why not?

24 A. They were not available to

1 meet.

2 Q. Do you know why?

3 A. No.

4 Q. Did the meeting with
5 Cardinal happen?

6 A. No.

7 Q. Do you know why?

8 A. No. The meeting with ABC
9 did occur.

10 (Document marked for
11 identification as Exhibit
12 Dempsey-15.)

13 BY MR. JANUSH:

14 Q. I'm going to hand you what's
15 been marked as Exhibit 15. And this is
16 Bates Number JAN-MS-02966153.

17 And I'm going to draw your
18 attention to the third page. There's an
19 attachment or a forward from the DEA to
20 Michele Dempsey, subject, McKesson agrees
21 to pay record \$150 million settlement for
22 failure to report suspicious orders of
23 pharmaceutical drugs.

24 Do you see that?

1 A. Yes, I do.

2 Q. And you, on the next day, on
3 January 18th, a day after receiving this,
4 forwarded this on to Frank Mashett and
5 asked if Frank can confirm whether the
6 Ohio distribution center listed below is
7 the location we ship schedules and what
8 precautions we should take in order to
9 ensure we don't ship to a location that
10 no longer is allowed to have CS, right?

11 A. Yes.

12 Q. For the record, can you
13 speak up?

14 A. Yes.

15 Q. Okay. And who is Frank
16 Mashett?

17 A. He was in the trade.

18 Q. So does that mean that he's
19 involved in sales?

20 A. No. He managed the
21 relationship with the wholesalers.

22 Q. Okay. Did he manage the
23 relationship with McKesson at this time,
24 in 2017?

1 A. No. As he was to remind me
2 that Phil West was the director for
3 McKesson.

4 Q. Sorry, I see that right
5 above.

6 So Frank responded by
7 letting you know Phil West is the trade
8 account director for McKesson and SeWha
9 Park is the JOM planner. The two of them
10 would be best to address my questions you
11 have related to this issue involving
12 McKesson.

13 And you respond, "Can you
14 please advise? Thanks." Right?

15 And you're writing to Phil
16 West and SeWha Park?

17 A. Yes.

18 Q. Okay. And the answer that
19 you got from Phil West was, "Hi, Michele.
20 This has been an on" -- "this has been
21 ongoing litigation and McKesson has
22 contingency plans in place to leverage
23 their distribution center network over 30
24 sites to continue continuity of product.

1 training.

2 BY MR. JANUSH:

3 Q. Okay.

4 A. She owned the training
5 program.

6 Q. And listed as a major
7 violation, wilful nonconformance with
8 federal regulations. No internal DEA
9 compliance processes in place to...

10 And we have things like
11 "detect and prevent diversion"; is that
12 right?

13 A. Yes.

14 Q. And, "submit DEA reports."
15 That's listed as well, right?

16 A. Mm-hmm.

17 Q. And, "identify and report
18 suspicious orders" is also listed, right?

19 A. Yes.

20 Q. And "train employees" is
21 also listed as a major violation; is that
22 right?

23 A. Yes.

24 Q. What's that regarding, train

1 employees?

2 A. Make sure that those that
3 are handling controlled substances know
4 how the regulations apply to their
5 activities.

6 Q. Okay. And control
7 distribution of controlled substance is
8 listed as a major -- an area for major
9 violation; is that right?

10 A. Well, it's listed as if you
11 do not demonstrate anything and having no
12 process in place to control the
13 distribution, you will potentially get
14 a -- a violation with the DEA.

15 Q. Now on to the next page you
16 address serious violations, right?

17 A. The next level down, yes.

18 Q. And at serious violations
19 you address "failure to implement
20 corrective actions that cause deviations
21 from federal regulations or internal DEA
22 compliance processes."

23 Did I read that correctly?

24 A. Yes, you did.

1 And I was trying to relay that the
2 environment is a lot different
3 than when we launched Concerta,
4 which is the other non-narcotic as
5 well as Duragesic, which you
6 reminded me was over 20 years old.

7 (Document marked for
8 identification as Exhibit
9 Dempsey-19.)

10 BY MR. JANUSH:

11 Q. I'm going to hand you what's
12 been marked as Exhibit 19.

13 This is minutes of a
14 suspicious order monitoring workshop.

15 MR. BARKER: Did you hand me
16 two copies?

17 MR. JANUSH: Sorry, I
18 apologize. I did. Maybe you can
19 pass one down.

20 MR. BARKER: Sure. Just
21 wanted to make sure --

22 MR. JANUSH: Total mistake.

23 BY MR. JANUSH:

24 Q. And it looks at the top of

1 the workshop agenda you are listed as a
2 speaker from the 11 to 12 o'clock hour.
3 And you are listed to address current JOM
4 program and Teva or Teva benchmark.

5 Do you see that?

6 A. Yes, I do.

7 Q. In 2017 did you benchmark
8 with Teva?

9 A. In 2017, yes, we did.

10 Q. And what did you benchmark
11 on?

12 A. We reviewed how they handle
13 the authorized generic of our ADHD
14 medicine. So we -- they walked through
15 their suspicious order monitoring program
16 in regards to the handling of our
17 methylphenidate product.

18 Q. Okay. And I'm going to turn
19 your attention to the second page here.
20 And you're addressing opportunities with
21 current order monitoring program
22 discussed at December 13, 2017 workshop.

23 And by -- by the way, were
24 you the author of this document? This

1 that you needed to have the
2 pharmaceutical data in the
3 statement you were saying, as part
4 of the suspicious order
5 monitoring, you needed to have the
6 pharmacy data.

7 And I'm explaining that we
8 have met with DEA, we've reviewed
9 our program, we have asked for
10 recommendations. And the last
11 time they had our SOPs was
12 December of 2017 that we provided
13 them our program. And that not
14 any of those times did they come
15 back and say well, you need to get
16 pharmaceutical data for our
17 Duragesic product.

18 BY MR. JANUSH:

19 Q. But you wanted to get
20 pharmaceutical data for your Schedule II
21 products in 2018 in order to enhance your
22 suspicious order monitoring program,
23 didn't you?

24 A. We were looking into that to

1 enhance it, because we thought that that
2 was what was the next phase of what was
3 needed.

4 Q. And one of the other things
5 that you were looking to do, was it not,
6 was to address the fact that your then
7 current suspicious order monitoring
8 program, as we've discussed a lot today,
9 only compared against a specific drug at
10 a specific strength when running the
11 mathematical formula to determine if an
12 order is suspicious. And you viewed that
13 to be an issue that should be fixed going
14 forward, right?

15 MR. BARKER: Object to form.

16 THE WITNESS: Our current
17 program was looking at Duragesic
18 SKUs, history of ordering patterns
19 with our customers.

20 DEA regulations say you have
21 to have a system in place that
22 monitors orders, and it doesn't
23 say you need to have pharmacy data
24 downstream. We were monitoring